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NL Industries, Inc. Consent Decree Settlement Analysis

ATTORNEY-CLIENT PRIVILEGED ENFORCEMENT CONFIDENTIAL

MEMORANDUM

SUBJECT: NL Industries, Inc. CERCLA Cost Recovery Consent Decree 10-Point Settlement Analysis

FROM: Larry L. Johnson, Assistant Regional Counsel
Brad Bradley, RPM

TO: David Ullrich
Acting Regional Counsel,
Region 5

William E. Muno, Director
Superfund Division,
Region 5

I. PURPOSE

The purpose of this Memorandum is to recommend that you sign the attached Consent Decree between the United States, on behalf of U.S. EPA, and NL Industries, Inc. (NL). The Consent Decree requires NL to pay to the U.S. EPA Hazardous Substance Superfund $29,780,000 in reimbursement of past response costs and a civil penalty of $1,000,000 for failure to comply with a Unilateral Administrative Order. The Consent Decree is based on the model Consent Decree and contains the standard Covenant Not to Sue and Contribution Protection language.

II. EXECUTIVE SUMMARY

From 1928 to 1983, a secondary lead smelter and battery recycling facility was operated at a plant located in Granite City, Illinois. NL owned and operated this facility from 1928 until August of 1979. As a result of industrial activities conducted by NL at the plant, including battery recycling and lead smelting operations, large amounts of waste containing lead and other hazardous substances were disposed of at the plant. This lead waste contaminated not only the plant, but also the soil of residences located nearby within a 60 block area in three cities at approximately 1500 residences. In August 1979, NL sold the plant to Taracorp Industries, Inc.

The amount of the response costs in this case was determined using the "old" cost accounting system. This is due to the fact that the generator Decree is based on the old system at it was deemed inequitable to apply a different system to a co-defendant. It is also due to the fact that settlement in principal occurred prior to implementation of the new cost accounting system. This settlement has been "grandfathered" i.e.allowed to proceed under the old system.

A separate RD/RA Consent Decree with six generators is awaiting entry in district court. The six

generators sent used lead batteries and other forms of scrap lead to the plant pursuant to arrangements with NL and later with Taracorp. Nearly all of the actual RD/RA work has been completed by these settling generators. The generator consent decree also requires the payment of $8,970,000 in response costs, $400,000 in civil penalties, and a SEP valued at $2,000,000. Together the two consent decrees represent roughly 97% of all government response costs, not including the civil penalties and SEPs.

III. BACKGROUND

A. Site History

From 1928 to 1983, a secondary lead smelter and battery recycling facility was operated at a plant located in Granite City, Illinois. NL Industries, Inc. owned and operated this facility from 1928 until August of 1979. As a result of industrial activities conducted by NL at the plant, including battery recycling and lead smelting operations, large amounts of waste containing lead and other hazardous substances were disposed of at the plant. This lead waste contaminated not only the plant, but also the soil of residences located nearby. In August of 1979, NL sold the plant to Taracorp Industries, Inc. Smelting operations at the facility ended in 1980.

The Site includes the plant as well as lead-contaminated adjacent property within Granite City, Madison, and Venice, Illinois. As a result of smelting activities and battery recycling operations at the Site, large volumes of lead and other hazardous substances, including antimony, arsenic, barium, cadmium, chromium, lead, mercury, nickel and zinc, were deposited at the Site. Portions of the waste piles came to rest at various places in the communities surrounding the piles as members of the public were permitted by NL to remove portions of the piles for use as fill material and smelting operations resulted in the emission of lead and other hazardous substances to the air and into the surrounding community at the Site.

In June of 1986, EPA placed the Site on the National Priority List ("NPL"). NL performed a Remedial Investigation and Feasibility Study ("RI/FS") between 1985 and 1990 pursuant to a 1985 Administrative Order on Consent. Based on the information developed by that RI/FS, EPA issued a Record of Decision ("ROD") that stated that the remedy for the Site would include excavation of lead contaminated soil exceeding 500 parts per million ("p.m.") in residential areas; excavation of all unpaved, non-residential areas where lead concentrations exceeded 1000 p.m.; concentration of various separate waste piles into one pile to be located at the plant; and capping of the waste pile.

On November 27, 1990, EPA issued a UAO to 49 potential responsible parties to carry out the

remedy outlined above. None of the defendants complied with this order. NL, and the generator defendants later named in this case, offered to perform part of the UAO, but refused to excavate soil located in residential areas that contained between 500 ppm and 1,000 ppm lead, arguing that the latter figure should be the cutoff point. Since the yards of about 1000 residences had lead contamination between 500 and 1,000 ppm, and only 350 had contamination at levels over 1,000 ppm, that meant that EPA would have to carry out the bulk of the remedy for the residences. EPA did not want to split the remedy, and began to implement a Fund-financed remedy. The failure of the defendants to comply with the UAO delayed execution of the remedy. The PRPs later made an offer to accept the 500 cleanup level, if they could average levels across a block itself, instead of going yard by yard. EPA rejected this approach for numerous reasons. The PRPs later came back to the agency and agreed to conduct the remedy contained in the ROD and DD/ESD.

B. Litigation History

In August 1991, we filed suit against NL and nine generators, of whom Johnson Controls, Inc., AT&T, Exide Corporation, Allied Signal, Inc., Gould, Inc., General Battery, Inc., and Ace Scrap Metal Processors, Inc. remain in the case. Our complaint sought both cost recovery under Section 107(a) and civil penalties and punitive damages for the failure of the defendants to carry out the UAO. Although we asked that the Court order the defendants to comply with the UAO, we did not seek a preliminary injunction to force the defendants to perform the remedy.

At the beginning of the case, the defendants persuaded the Court that the only real issue in the case was the validity of the remedy, and thus the Court chose to address this issue first. Presently before the Court is the question of the standard of review; once this has been done, the parties will proceed to brief the question of whether EPA s remedy was arbitrary and capricious.[1] Only when that issue is decided will liability be addressed. As a consequence of this organization of the case, third party complaints have not been filed.[2]

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[1] For the past four years litigation has been frozen as the parties awaited the Court's decision and settlement negotiations have gone forward.

[2] There are several hundred *de minimis* generator PRPs who have not been brought into the litigation. An administrative settlement has been reached with them which will result in proceeds of approximately $1,283,318 which will be placed into a special account for the benefit of the six settling generator defendants.

Shortly after the complaint was filed, the City of Granite City intervened and filed a motion to restrain the remedy. The City and the defendants claimed that cleanup of residential yards below 1,000 ppm could not be justified by the administrative record. An agreement was reached whereby the remedy was remanded to the agency and additional material was received to supplement the administrative record. The remand had the effect of enjoining the remediation of the contaminated yards, in that EPA (at the Court's urging) agreed not to pursue this part of the remedy. EPA did continue work on noncontroversial parts of the remedy, such as the remote fill areas. The only residential yards that were remediated during this time certain residences were contaminated at levels above 1,000 ppm.

During the remand, the defendants submitted material arguing that the proper level of cleanup was 1,000 ppm for the residential soil. Nevertheless, EPA reaffirmed its decision to require excavation of soils containing at least 500 ppm of lead in a decisional document/explanation of significant differences ("DD/ESD") issued September 14, 1995. This document did modify the remedy by adding a requirement that ground water at the former NL facility be treated because additional testing had found contamination not identified in the RI/FS.

Based on the DD/ESD, in the spring of 1996 EPA began to implement that part of the remedy requiring excavation of residential soil at levels above 500 ppm. Granite City revived its motion for a TRO, claiming that implementation of the remedy would result in irreparable harm to the City and its citizens. The City claimed that the real threat of lead contamination was posed by lead paint found in the homes located in the City, and that the remedy as implemented by U.S. EPA was harming the community. The City received assistance from the defendants in its efforts. In opposing the remedy, the City appeared to have been motivated by an effort to get funds for addressing the lead paint problem. Section 104(a)(3) of CERCLA prohibits EPA from carrying out response actions inside of residences, and so the Superfund could not be used to pay for lead paint remediation.

In opposing the City's motion to enjoin the remedy, we relied on Section 113(h)(4), which prohibits pre-enforcement review of EPA's remedial decisions. We also argued that the City had failed to show that the remedy would in fact cause irreparable harm. On August 22, 1996, the Court issued its decision. It found that Section 113(h)(4) divested it of jurisdiction to review EPA's remedy at this time. It went on to find that the City had failed to show that implementation of the remedy would cause irreparable harm. EPA then proceeded with all aspects of the remedy until, as indicated below, it permitted the generator defendants to take over the work in July of 1998.

C. Settlement Discussions

The failure of the City's effort to enjoin EPA's remedy caused the defendants to initiate settlement discussions. Since the generator defendants and NL were unwilling to reach an internal settlement that would permit them to deal with us jointly, we have dealt with them individually.

The first offer came from NL. It offered to pay $20 million to cash out its liability. The basis for this offer was NL's estimate that the total costs at the Site would be $60 million, and that as an owner-operator, its share of the liability should be 50%. It asserted that its share should be further reduced because other owner-operators (e.g., Taracorp) were responsible for some part of the contamination. NL's offer did not include any payment for civil penalties for its failure to comply with the UAO. NL refused to perform a supplemental environmental project ("SEP") to address lead paint because it is owned by a company that has made lead paint in the past.

In their initial proposal, the generator defendants offered to do the remaining work at the Site, including remediation of residential soil containing greater than 500 ppm lead, something they refused to do in the past. They did not offer to pay any response costs nor to make any payments towards a civil penalty. We pushed for a settlement with the generators that would result in their paying almost all of EPA's past costs and to take over certain components of the remedy, not including the residential yard remediation because it was felt to transfer this work from EPA's contractor to the generators would only further delay the remedy. We also asked the generator defendants to carry out a lead paint remediation SEP for residences in the area.

The most difficult issue was determining the amount which should be paid in settlement of the civil penalty/punitive damages claim. We determined that application of EPA's draft civil penalty policy would result in a very large penalty that defendants would be unwilling to pay and that the Court be unlikely to award. Consequently, rather than relying on the draft penalty policy, we calculated a penalty that was in line with what we have obtained in other cases. Based on these factors, we sought to obtain between $300,000 and $500,000 from the generator defendants collectively, and to have them perform a lead paint remediation SEP worth $2-3 million. We also determined that a $1 million penalty would be sought from NL. Combined, this approach results in a civil penalty of $1.5 million and a SEP worth at least $2 million.

EPA suggested that it would be amenable to a settlement in which, in addition to paying a penalty for failure to comply with its administrative order, the defendant generators as a group representing all generators and NL, individually, would share responsibility for all past response costs and future remediation costs on a roughly equivalent basis. To that end, EPA used its cost estimate for future remedial costs as the basis upon which to credit the future work towards the settlement amount of whoever performed it.

Eventually, EPA elected to permit the generator defendants to complete the remedial action because, in part, NL was unwilling to perform a SEP designed to abate lead in residences near the Site and the generator defendants were. The generator defendants' settlement therefore is a combination of the EPA estimate of the costs of future remediation plus a share of past costs. The NL settlement addresses the balance of all remaining unreimbursed response costs. In July 1998, the generator defendants, in order to maximize any savings attributable to performing the remedy, took over performance of the remedy with approval of EPA Region 5. They have been performing all remediation at the Site since that time.

IV. SETTLEMENT TERMS

The Consent Decree requires NL to pay to the U.S. EPA Hazardous Substance Superfund $29,780,000 in reimbursement of past response costs and a civil penalty of $1,000,000 for failure to comply with a Unilateral Administrative Order. The Consent Decree is based on the model Consent Decree and contains the standard Covenant Not to Sue and Contribution Protection language

V. ANALYSIS OF SETTLEMENT CRITERIA

Considering all of the factors set forth in the CERCLA Settlement Policy, it is in the Government's interest to enter into this Consent Decree.

1. Volume of Waste Contributed to Site

Documentation of waste shipments to the Site is limited to the period covering 1970 -1983. The total poundage of wastes contributed to the Site during that period of time was 235,034 tons. All wastes received at the Site were batteries or other lead-bearing scrap materials. These materials also contained other metals such as antimony, arsenic, barium, cadmium, chromium, mercury, nickel and zinc. Contamination was spread throughout the entire Site, including the communities, via stack emissions, battery casing materials being offered as fill material, the creation of the 250,000 ton slag pile, and contamination leaching to the groundwater from the slag pile. All information regarding generators from 1970-1983 was provided to EPA by NL. The only limitation of this documentation is that none exists prior to 1970.

2. Nature of Waste

The waste was derived from scrap containing lead which consists of old batteries, battery plates, wire, and various other scrap metal which were then processed in the secondary lead smelter.

The primary contaminants derived from this process was lead, and other metals. Acid contained in lead batteries may have also changed the chemistry of the lead, and made it more mobile as evidenced by groundwater contamination.

3. Strength of Evidence Linking NL to the Site

The evidence linking NL to the Site is virtually irrefutable. NL was the owner and operator of the facility for roughly 70 years.

4. Ability to Pay

The ability to pay for the remedy by NL does not appear to presently be an issue. However, recent state court cases have found various lead companies liable to States for health costs incurred from lead exposure, similar to the liability of tobacco companies to States. The Consent Decree requires payment of the entire amount within 31 days of entry of the Decree. If an appeal is taken for any reason, the Decree requires NL to immediately place the entire amount of its obligation into an interest bearing escrow account until the appeal is resolved.

5. Litigative Risks Proceeding to Trial

a. Admissibility of U.S. EPA's Evidence.

No apparent problem.

b. Adequacy of U.S. EPA's Evidence.

No apparent problem.

c. Availability of Defenses.

The only defense to liability seemingly available to NL would be limited to the issue of civil penalties in that EPA never reissued the UAO to the defendants after the DD/ESD was issued.

6. Public Interest Consideration

The nature of this Site and the remedy has promoted a high level of public interest in this Site. However, most if not all of the public's interest focused on the remedial aspects and lead

abatement which are addressed to the public's satisfaction by the generator Decree. There has been very little interest in government cost recovery matters.

7. Precedential Value

This settlement has little precedential value

8. Value of Obtaining a Present Sum Certain

There is a high value placed on obtaining a present sum certain under the present circumstances of the Fund, especially when that sum, together with the other Decree, represents such a high percentage of total government costs.

9. Inequities and Aggravating Factors

None.

10. Nature of the Case That Remains After Settlement

After this settlement is finalized, EPA will have an estimated $2 to $3 million remaining unrecovered response costs. Some of this amount may be recovered in past cost settlements with the few remaining non-*deminimis* generators.

VI. Recommendation

For the reasons set forth above, and based on an evaluation of the terms of the proposed Consent Decree, it is my recommendation that the U.S. EPA enter into the Consent Decree. I believe its outcome represents the best interest of Superfund under all of the present circumstances.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, Plaintiff, v. NL INDUSTRIES, INC., et al., Defendants, and CITY OF GRANITE CITY, et al., Intervenor-Defendants.	Civil No. 91-00578-JLF

CONSENT DECREE

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I. BACKGROUND

A. Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed the Complaint in this action on July 31, 1991, against eleven (11) defendants, including NL Industries, Inc. ("Settling Defendant"), pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The Complaint filed by the United States in this action seeks: (1) injunctive relief to compel defendants to undertake remedial action at the NL Industries Superfund Site in Granite City, Madison, and Venice, Illinois (the "Site," as defined in Section IV, below) in accordance with an Administrative Order issued by EPA pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606; (2) recovery of costs which the United States has incurred in responding to releases and threatened releases of hazardous substances at the Site; (3) a declaration that defendants will be liable for additional costs that may be incurred by the United States in responding to releases or threatened releases of hazardous substances at the Site; and, (4) civil penalties and punitive damages for defendants' failure to comply with the Administrative Order.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054.

D. In response to a release or a substantial threat of a release of hazardous substance at or from the Site, in May 1985 the Settling Defendant commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

E. The Settling Defendant issued a Feasibility Study ("FS") Report in August 1989. On January 10, 1990, EPA issued an FS addendum. The FS was completed on March 30, 1990.

F. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the remedial action.

G. The decision by EPA on the remedial action to be implemented at the Site is embodied in a Record of Decision ("ROD"), executed on March 30, 1990, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

H. On June 25, 1990, EPA initiated a 60 day period of negotiations regarding implementation of the remedy in the ROD by sending special notice letters, pursuant to Section 122(e) of

CERCLA, 42 U.S.C. § 9622(e), to the Settling Defendant as well as nearly 300 other potentially responsible parties ("PRPs"). In accordance with the National Contingency Plan ("NCP") and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Illinois (the "State") of negotiations with PRPs regarding the implementation of the remedy and provided the State with an opportunity to participate in such negotiations. At the conclusion of the 60 day negotiation period, EPA had not reached agreement with the PRPs regarding implementation of the remedy.

I. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior, as Federal natural resource trustee, on June 25, 1990 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship, and encouraged the participation of such trustee in the negotiations.

J. On November 27, 1990, EPA issued a unilateral administrative order, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to various parties, including the Settling Defendant.

K. On October 14, 1994, EPA reopened the Administrative Record, providing a new opportunity for public comment on lead cleanup levels for residential soils at the Site. After evaluating all public comments and preparing an extensive response, EPA issued on September 29, 1995, a decisional document/explanation of significant differences ("DD/ESD") supplementing the original ROD. The DD/ESD set forth EPA's responses to public comments.

In the DD/ESD, EPA reaffirmed its decision to require excavation of residential soils containing at least 500 ppm lead. In addition, EPA modified the remedy by adding a requirement that the contaminated ground water at the former NL facility be contained because additional testing had found contamination not identified in the RI/FS.

L. EPA has reached a tentative settlement, subject to public comment, with a group of six generator defendants ("Settling Generator Defendants"), under which the Settling Generator Defendants have agreed to complete implementation of the remedy, reimburse a portion of the response costs previously incurred by the United States in connection with the Site, make payment of oversight costs incurred in connection with the remedy selected in the ROD and DD/ESD for the Site, and resolve claims for alleged violations of the UAO by paying a civil penalty of $400,000 and completing a supplemental environmental project consisting of a $2,000,000 lead paint abatement program in Madison County ("Generator Consent Decree").

M. On September 19, 2000, EPA issued an ESD changing provisions of the ground water remedy described in the DD/ESD. Based on information concerning the limited extent of ground water contamination at the Site and the lack of private drinking water wells in the vicinity of the Site, the September 19, 2000 ESD eliminated the requirement for installation of a groundwater containment system at this time; instead, the ESD provided for continued monitoring of ground water at the Site and for

development and implementation of a contingency plan, if lead concentrations exceed applicable standards at perimeter wells at the Site.

N. This Consent Decree is made and entered into by and between Plaintiff, the United States of America, and Settling Defendant. The purpose of this Consent Decree is: (1) to provide for Settling Defendant's payment of its fair share of response costs incurred or to be incurred by any person, entity, governmental unit, or party, including the Settling Generator Defendants, in responding to the release and threatened release of hazardous substances at the Site; (2) to provide for payment of a civil penalty by Settling Defendant for failure to comply with EPA's Administrative Order, dated November 27, 1990; (3) to resolve claims against the Settling Defendant, as set forth herein; and (4) to provide Settling Defendant protection against contribution claims by third parties relating to the Site, as set forth herein.

O. The Settling Defendant filed an answer and affirmative defenses to the Complaint denying any and all liability. The Settling Defendant does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the Complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The participation of the Settling Defendant in this Consent Decree should not be considered an

admission of liability for any purpose, and the fact of such participation by the Settling Defendant shall not be admissible against such Settling Defendant at any judicial or administrative proceeding, except in an action or proceeding brought by the United States to enforce the terms of this Consent Decree.

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, and upon Settling Defendant and its successors and

assigns. Any change in ownership or corporate status of Settling Defendant, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, and incorporated hereunder, the following definitions shall apply:

a. "Administrative Order" means the Administrative Order EPA issued to Settling Defendant and other entities not a party to this settlement on November 27, 1990, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

c. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that remedial action has been completed at the Site in accordance with the requirements of the NCP, the ROD and DD/ESD, and the Generator Consent Decree requiring the performance of remedial action at the Site.

d. "Consent Decree" or "Decree" shall mean this Consent Decree and any appendix attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

f. "Decision Document/Explanation of Significant Differences" or "DD/ESD" shall mean the document supplementing the record of decision signed by the Administrator on September 29, 1995.

g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

i. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, for response actions relating to the Site incurred by EPA (including all such costs incurred pursuant to interagency agreements between EPA and other federal agencies), the Agency for Toxic

Substances and Disease Registry (※ATSDR※), and DOJ on behalf of EPA and ATSDR that EPA and DOJ on behalf of EPA will incur for response actions relating to the Site after October 7, 1999, and includes any such costs incurred after entry of the Consent Decree.

k. "Generator Consent Decree" shall mean the Consent Decree to resolve claims of the United States against the Settling Generator Defendants, and any appendix attached thereto.

l. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

m. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substance Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including but not limited to any amendments thereto.

n. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

o. "Parties" shall mean the United States and the Settling Defendant.

p. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, for response actions relating to the Site incurred by EPA (including all such costs incurred pursuant to interagency agreements

between EPA and other federal agencies), the Agency for Toxic Substances and Disease Registry (※ATSDR※), and DOJ on behalf of EPA and ATSDR through the date of entry of this decree, plus accrued Interest on all such costs through October 7, 1999.

q. "Plaintiff" shall mean the United States.

r. "Record of Decision" or "ROD" shall mean the Record of Decision signed by the Regional Administrator for Region V of EPA on March 30, 1990, for the Site.

s. "Remedial Action" shall mean the response actions at the Site set forth in the March 30, 1990, Record of Decision and the September 29, 1995, DD/ESD.

t. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

u. "Settling Defendant" shall mean NL Industries, Inc.

v. "Settling Generator Defendants" shall mean Johnson Controls, Inc., Lucent Technologies, Inc., Exide Corporation, Allied Signal, Inc., GNB Technologies, Inc., and General Battery Corporation.

w. "Site" shall mean the NL Industries/Taracorp Superfund Site located in Granite City, Madison, and Venice, Illinois, as depicted in Appendix A of this Consent Decree, and additional residential areas where lead has come to be located in concentrations greater than 500 parts per million as a result of smelting operations conducted at the former lead smelter located at 16th Street and Cleveland Boulevard, Granite City, Illinois, as identified in the remedial design. The Site includes the

property, not including any buildings, currently owned or operated by Taracorp and Metalico, Inc. located at 16th Street and Cleveland Boulevard, Granite City, Illinois; properties, not including buildings, adjacent to the Metallico property, currently owned or operated by the First Granite City National Bank Trust No. 454 (now known as the Magna Trust Company), Rich Oil Company, and BV&G Transport Company (formerly Tri-City Trucking); approximately 100 square blocks of residential property as depicted in Appendix A; and certain fill locations in Granite City, Madison, and Venice, Illinois and adjacent areas, as depicted in Appendix A.

x. "State" shall mean the State of Illinois.

y. "United States" shall mean the United States of America, including it departments, agencies and instrumentalities.

V. REIMBURSEMENT

4. a. Within 31 days of the date this Consent Decree is entered by the Court, Settling Defendant shall pay to the EPA Hazardous Substance Superfund the sum of $29,780,000 in the manner specified in paragraph 4.d, below; provided, however, that if any timely appeal of the Court's order entering this Consent Decree is filed, then, within 40 days after entry of the Consent Decree, Settling Defendant shall pay the sum of $29,780,000 into an interest-bearing escrow account, pending resolution of such appeal(s). Upon a final decision affirming the order entering this Consent Decree, the proceeds of the escrow account,

including accrued Interest, shall be paid to the Hazardous Substance Superfund, in the manner specified in paragraph 4.d, below; provided, however, that if the escrow account interest rate exceeds the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, then the amount of any such excess interest (i.e., accrued interest in excess of the amount of Interest that accrued at the rate specified for interest on investments of the Hazardous Substance Superfund) shall be paid to Settling Defendant. Upon a final decision reversing the order entering this Consent Decree, all proceeds of the escrow account shall be paid to Settling Defendant. If Settling Defendant does not pay the full amount specified in this Paragraph 4.a to the Hazardous Substance Superfund or the interest-bearing escrow account, as applicable, when due, Settling Defendant shall also pay Interest on the unpaid balance. For purposes of this paragraph a decision shall be considered ※final※ only after exhaustion of all opportunities for appellate review or expiration of the time for filing further appeals. Interest shall accrue on the unpaid balance beginning on the thirty-first day after entry of this Consent Decree and continuing until the entire principal amount has been paid.

b. In addition to the above payments, Settling Defendant shall also pay to the EPA Hazardous Substance Superfund 50% of those unresolved costs ($1,420,000) currently subject to an audit (hereinafter "Costs Subject to Audit") that are deemed

proper and correct by the audit and approved by EPA upon EPA report of the audit results and a bill requiring payment. The amount of Costs Subject to Audit payable by Settling Defendant shall in no event be more than 50% of $1,420,000. Settling Defendant shall make payment in the manner specified in Paragraph 4.d, below, within 60 days of Settling Defendant's receipt of the bill requiring payment. In the event that the payment required by this Paragraph 4.b. is not made within 60 days of receipt of a bill requiring payment, Settling Defendant shall pay Interest on the unpaid balance. Interest on the Costs Subject to Audit shall begin to accrue on the date of the bill, and shall continue to accrue until payment in full of all amounts due pursuant to this Paragraph 4.b.

c. Payment of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section.

d. All payments to the Hazardous Substances Superfund required pursuant to Paragraph 4.a. and 4.b. shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the DOJ account in accordance with current electronic funds transfer procedures, referencing USAO File Number 1991V00303, the EPA Region and Site/Spill ID Number 05W8, and DOJ Case Number 90-11-3-608/3. Payments required by Paragraph 4.a. and 4.b. shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States

Attorney's Office for the Southern District of Illinois following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendant shall send notice that such payment has been made to the United States as specified in Section XIII (Notices and Submissions) and to:

Financial Management Officer,
U.S. Environmental Protection Agency - Region 5
Mail Code MF-10J
77 West Jackson Boulevard
Chicago, IL 60604.

VI. CIVIL PENALTY

5. Within 31 days of the date this Consent Decree is entered by the Court, or, if appeal(s) have been taken of the Court's order entering this Consent Decree, within 30 days of the resolution of such appeal(s), Settling Defendant shall pay to the EPA Hazardous Substance Superfund a civil penalty of $1,000,000 for failure to comply with the Administrative Order, in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Illinois. Settling Defendant shall send notice that such payment has been made to the United States as specified in Section XIII (Notices and Submissions).

VII. STIPULATED PENALTY

6. Interest on Late Penalty Payments. In the event that any payment(s) required by Section VI (Civil Penalty), or Section VII, Paragraph 7 (Stipulated Penalty), are not received when due,

Interest shall continue to accrue on the unpaid balance through the date of payment.

7. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, Settling Defendant shall pay to EPA a stipulated penalty, in addition to the Interest required by Paragraphs 4 and 6, of $5,000 per violation per day that such payment is late for the first 14 days of such noncompliance, and $15,000 per violation per day that such payment is late thereafter.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency - Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 05W8, USAO File Number 1991V00303, and DOJ Case Number 90-11-3-608/3. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XIII (Notices and Submissions) and to:

Financial Management Officer,
U.S. Environmental Protection Agency - Region 5
Mail Code MF-10J
77 West Jackson Boulevard
Chicago, IL 60604.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. Payments made under Paragraphs 7 and 8 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

10. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 11, 12, and 14, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall

take effect upon the receipt by EPA of the payments required by Section V. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

11. United States' Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

12. United States' Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the

United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

13. For purposes of Paragraph 11, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the DD/ESD was signed and which are set forth in the ROD, the DD/ESD for the Site or the administrative record supporting the ROD and DD/ESD. For purposes of Paragraph 12, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the ROD, the DD/ESD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA

pursuant to the requirements of the Generator Consent Decree prior to Certification of Completion of the Remedial Action.

14. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 10. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs other than Past Response Costs or Future Response Costs as defined herein;

(5) criminal liability; and

(6) liability, if any, for violations of federal or state law which occur during or after implementation of the Remedial Action.

IX. COVENANTS BY SETTLING DEFENDANT

15. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for

reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§ 106(b)(2), 107, 111, 112, or 113, or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113 related to the Past Response Costs or Future Response Costs, or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

16. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

17. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent

Decree are response costs incurred by any person, entity, governmental unit, or party, including the Settling Generator Defendants, relating to the Site, as well as response actions taken or to be taken, and response costs to be incurred, by any person, entity, governmental unit, or party, including Settling Generator Defendants, in connection with implementation of the Remedial Action.

18. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

19. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the

United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XI. ACCESS TO INFORMATION

20. Settling Defendant shall provide to EPA, upon request, and after reasonable notice, copies of all non-privileged documents and information within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

21. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of

CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

22. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

engineering data, or any other documents or information evidencing conditions at or around the Site.

XII. RETENTION OF RECORDS

23. Until 7 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

24. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated

pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. Any dispute concerning a claim of privilege shall be resolved pursuant to the Federal Rules of Civil Procedure and applicable law governing the privilege asserted.

XIII. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-608/3)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Larry L. Johnson
Associate Regional Counsel
United States Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, IL 60604

Brad Bradley
EPA Project Coordinator
United States Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, IL 60604

As to Settling Defendant:

David Garten
NL Industries, Inc.
Vice President and General Counsel
16825 North Chase Drive
Houston, TX 77210

Marcus Martin
Highland Environmental Management
1630 30th Street, Suite 600
Boulder, CO 80301

XIV. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDIX

27. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent

Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

28. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

29. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. EFFECTIVE DATE

30. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVIII. SIGNATORIES/SERVICE

31. Each undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

32. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

33. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. NL Industries, Inc., et al., Civil No. 91-00578-JLF, relating to the NL Industries Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

STEVEN J. WILLEY
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division U.S.
Department of Justice
P.O. Box 7611
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LAURA J. JONES
United States Attorney
Southern District of Illinois

WILLIAM E. COONAN
Assistant United States Attorney
Nine Executive Drive
Suite 300
Fairview Heights, IL 62208
(618) 628-3714

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. NL Industries, Inc., et al., Civil No. 91-00578-JLF, relating to the NL Industries Superfund Site.

for WILLIAM E. MUNO
Director, Superfund Division
United States Environmental
Protection Agency
Region V
77 West Jackson Blvd.
Chicago, IL 60604

LARRY L. JOHNSON
Assistant Regional Counsel

United States Environmental
Protection Agency
Region V
77 West Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NL Industries, Inc., et al., civil no. 91-00578-JLF, relating to the NL Industries Superfund Site.

FOR DEFENDANT NL INDUSTRIES, INC.

Date: 7/31/02

David B. Garten
Vice President, Secretary
and General Counsel

Agent Authorized to Accept Service on Behalf of Above signed Party:

Name: Marcus Martin

Title:

Address: Highland Environmental Management
1630 30th Street, Suite 600
Boulder, CO 80301